IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 24TH AUGUST 2007 / 2ND BHADRA 1929

Crl.MC.No. 2728 of 2007()

CC.357/2000 of JUDL. MAGISTRATE OF FIRST CLASS COURT, ADIMALI

.....

CRIME NO.398 OF ADIMALI POLICE STATION

PETITIONER:

NASSER, S/O.SAINUDEEN, AGED 29 YEARS,
RESIDING AT PADINJAREKARAYIL HOUSE, VAKERA KARA,
ADIMALI P.O., MANNAMKANDAM VILLAGE,
IDUKKI DISTRICT.

BY ADV. SRI.A.C.DEVASSIA
SRI.T.J.MICHEAL

RESPONDENTS:

---

1. STATE OF KERALA REPRESENTD BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. SUB INSPECTOR OF POLICE,
ADIMALI, POLICE STATION,
IDUKKI DISTRICT.

BY PUBLIC PROSECUTOR ADV.SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 24/08/2007,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

= = = = = = = = = = = = = =

Crl.M.C. No.2728 Of 2007

= = = = = = = = = = = = = = =

Dated this the 24rd day of August, 2007

ORDER

The petitioner was accused in Crime No.398 of 1999 of Adimaly Police Station, registered inter alia under Sec.353 read with 149 IPC. Final report was filed. Cognizance was taken by the learned Magistrate. The petitioner was not available for trial. The case against him was split up. The co-accused who faced trial were found not guilty and acquitted.

2. The petitioner has now come before this Court with a prayer that Sec.482 may be invoked to quash the proceedings against the petitioners. What is the reason? The learned counsel for the petitioner submits that co accused have been found not guilty and therefore the benefit to such judgment of acquittal may be extended to the petitioner herein also.

3. I am afraid the request cannot be accepted. The learned counsel for the petitioner was requested to explain how in the light of the decision by the Full Bench in **Moosa Vs.Sub Inspector of Police** (2006(1) KLT 552), the petitioner can be held to be entitled to pray for quashing of proceedings. Except that the co-accused have been acquitted, I find no specific reason urged.

4. The mere fact that the co-accused have been acquitted cannot deliver any advantage to the petitioner. The petitioner must certainly face trial on the allegations raised against him. Annexure IV judgment cannot in any way help him to avoid the liability to face trial for the offences alleged against him. I find no merit in the prayer to invoke the extra ordinary inherent jurisdiction available with this Court to quash the proceedings against the petitioner.

5. The learned counsel for the petitioner submits that the learned Magistrate has issued warrant of arrest against the petitioner. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. The learned Magistrate must consider such application for bail on merits, in accordance with law and expeditiously.

6. This Crl.M.C is, in these circumstances, dismissed, but with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for regular bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously-on the date of surrender itself.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE